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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,050	11/02/2001	Daniel J. Piotrowski	US010514	4937

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EXAMINER

DIETRICH, ETHAN M

ART UNIT PAPER NUMBER

3692

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,050

Applicant(s)

PIOTROWSKI, DANIEL J.

Examiner

Ethan M. Dietrich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2 November, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

Specification page 8 lines 5-21, "remote terminal 109," "memory 202," "display 121," and "remote terminal 100" are described as being shown in Figure 2 of the drawings received on September 3, 2002. These objects cannot be found in Figure 2.

Specification page 12 lines 1-18, "service nodes 114" and "remote terminal 100" are described as being shown in Figure 2 of the drawings received on September 3, 2002. These objects cannot be found in Figure 2.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,7 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated

Mulla et al, U.S. Patent Application 09467905.

Regarding **claim 1**, Mulla discloses “A wireless remote terminal apparatus (page 22 lines 4-8) comprising: a label reader (211) capable of reading information from a label (212), wherein the label is associated with a first product; a communication unit (236) capable of communicating information to one or more service nodes; and a controller (214), coupled the label reader, the communication unit, arranged to receive information from the label reader, send a request to one or more of the service nodes (page 21 lines 18-22) through the communication unit, receive at least one competitive bid from an on-line retailer’s (page 21 lines 18-21) product similar to the first product and wherein the request and the competitive bid are formatted as documents capable of being exchanged in a distributed, decentralized environment (page 19 lines 3-13).”

Regarding **claim 2**, Mulla does not specifically disclose a device with the capability of sending “a counter offer to one or more of the service nodes.” However, it would be obvious to one skilled in the art that a device capable of sending an initial bid, such as the Mulla device, would also be capable of sending a second, or counter offer,

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bid since to do so is an inherent aspect of a bidding processes and the device is already equipped to send bids.

Regarding **claims 3 and 8**, Mulla discloses a device that stores profile information and allows it to be accessed by a service node for the purpose of accepting a selected competitive bid and engaging in a transaction (page 19 lines 28-29, page 20 lines 1-16, page 21 lines 20-21, page 38 lines 1-17, page 38 lines 24-29, page 39 lines 1-2).

Regarding **claim 4**, Mulla discloses communication between the device and the service nodes via a client/server network (page 19 lines 9-17).

Regarding **claim 7**, Mulla discloses a context sensor (page 7 lines 27-28).

Regarding **claims 9 and 11**, Mulla discloses a label reader comprised of a barcode reader (page 5 line 12) or an RFID tag reader (page 19 line 20).

Regarding **claim 10**, Mulla discloses a device comprising "a memory (232); and a processor (228) coupled to the memory and operative to read an item's tag information (212), communicate the tag information to a service node (236, page 21 lines 11-14), receive a competitive bid from the service node (page 21 lines 18-19), and responsive to the received response, to allow profile information to be accessed by a service node to engage into a commercial transaction (page 20 lines 7-16, page 21 lines 20-21,), and where the request and the response are formatted as documents capable of being exchanged in a distributed, decentralized environment (page 38 lines 1-17)."

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Regarding **claim 12**, Mulla discloses a method that includes "reading label information from a first product (page 21 lines 5-7), the product located at a retailer location, using a remote terminal (page 19 lines 23-27); communicating the information to one or more service nodes using the remote terminal (page 21 lines 12-14); searching, using the label information from the first product, one or more other retailers' information for similar products (page 21 lines 12-14); forming a competitive bid proposal for the similar products by at least one other retailers (page 21 lines 18-19); and transmitting the competitive bid proposal to the wireless remote terminal (page 21 lines 3-23, page 22 lines 8-10, page)."

Regarding **claim 13**, Mullah discloses a method that includes accepting a competitive bid proposal (page 21 lines 12-22, page 22 lines 8-10, page).

Regarding **claim 14**, Mulla does not specifically disclose a device with the capability of sending "a counter offer to one or more of the service nodes." However, it would be obvious to one skilled in the art that a device such as the Mulla device, capable of sending an initial bid and then receiving an offer, would also be capable of sending a second, or counter offer, bid since to do so is an inherent aspect of a bidding processes and the device is already equipped to do so.

Regarding **claim 15**, Mulla discloses a method whereby a user's profile information stored in a portable scanning device is responded to by one or more service nodes (page 19 lines 28-29, page 20 lines 1-16, page 21 lies 20-21, page 38 lines 1-17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulla et al as applied to claim 4 above, and further in view of Tracy, U.S. Patent No. 5,979,757. The teachings of Mulla et al have been discussed above.

Regarding **claim 5**, Mulla does not disclose an apparatus "wherein the documents comprise XML documents." However, Tracy does make this disclosure (column 10 lines 33-38). One skilled in the art would be sufficiently motivated to combine the teachings of Mulla with those of Tracy because doing so allows the device to communicate with a broad range of networks and devices, thus enhancing the effectiveness of the device. Tracy provides the motivation to combine in stating that "standard programming tools" allow for "ease of retrieving and converting data files from external sources."

Regarding **claim 6**, Mulla does not disclose an apparatus "wherein the XML documents are expressed as SOAP messages." However, Tracy does make this disclosure (column 10 lines 33-38). One skilled in the art would be sufficiently motivated to combine the teachings of Mulla with those of Tracy because doing so allows the device to communicate with a broad range of networks and devices, thus enhancing the effectiveness of the device. Tracy provides the motivation to combine in stating that "standard programming tools" allow for "ease of retrieving and converting data files from external sources."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Waxelbaum et al, U.S. Patent 6,308,893, discloses a method of

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using of a portable bar code scanner connected to the internet to make product inquiries from multiple sellers. Koenck et al, U.S. Patent 5,468,948, discloses a hand held apparatus equipped with a scanner for use in wireless communications. Sloane, U.S. Patent 5,918,211, discloses a portable scanning device and a method of using the device to provide shoppers with product information. Campo et al, U.S. Patent 6,138,914, discloses the use of a portable scanning device as a point-of-sale terminal. Gupta et al, U.S. Patent Number 5,361,971, discloses a portable shopping system for use in-store by customers. Walsh, U.S. Patent 6,230,970, discloses a hand held apparatus equipped with a scanner for use in transactions. Schwartz et al, U.S. Patent Application 09/573,582, discloses a hand held terminal that includes an odor sensor.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ethan M. Dietrich whose telephone number is 571-272-1874. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot, can be reached at 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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